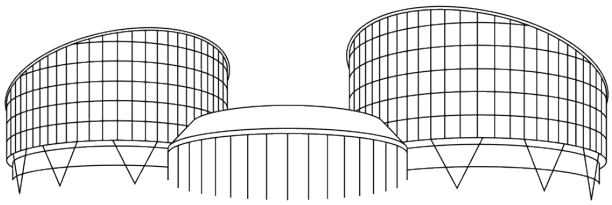

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF HORYCH v. POLAND

(Application no. 13621/08)

JUDGMENT

STRASBOURG

17 April 2012

FINAL

17/07/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Horych v. Poland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

David Thór Björgvinsson, *President,*
Lech Garlicki,
Päivi Hirvelä,
George Nicolaou,
Zdravka Kalaydjieva,
Nebojša Vučinić,
Vincent A. De Gaetano, *judges,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 27 March 2012,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 13621/08) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr Andrzej Horych ("the applicant"), on 25 February 2008.

2. The applicant was represented by Mr J. Znamiec, a lawyer practising in Kraków. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the prolonged imposition of the so-called "dangerous detainee" regime on him had been in breach of Article 3 of the Convention and that restrictions on his contact with his family amounted to a violation of Article 8 of the Convention.

4. On 31 August 2009 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1957 and lives in Warszawa. He is currently detained in the Warsaw Mokotów Remand Centre.

A. Criminal proceedings against the applicant (case no. IV K 200/05)

6. On 14 July 2004 the applicant was arrested on suspicion of drug smuggling. On 15 July 2004 the Gdańsk District Court (*Sąd Rejonowy*) remanded him in custody for 3 months, relying on the reasonable suspicion – supported by evidence taken from witnesses – that he had committed the offence in question and the need to secure the proper course of the proceedings. The court also attached importance to the likelihood of a severe sentence of imprisonment being imposed on the applicant and the risk that he would attempt to induce witnesses to give false testimony or would otherwise obstruct the proceedings. That risk was justified by the fact that the case involved a large number of accomplices who had not yet been apprehended.

7. An appeal by the applicant against the detention order, likewise his further appeals against subsequent decisions extending his detention and all his subsequent applications for release and appeals against refusals to release him were unsuccessful. In his applications and appeals, he argued that his lengthy detention violated the provisions of the Code of Criminal Procedure relating to the imposition of this measure.

8. In the course of the investigation, the applicant's detention was extended on several occasions, namely on 21 September 2004 (to 31 December 2004), 21 December 2004 (to 31 March 2005) and 22 March 2005 (to 30 June 2005). In all their decisions the authorities relied on the original grounds given for the applicant's detention. The courts also stressed the fact that, owing to the complexity of the case, the investigation had still not been completed.

9. On 16 June 2005 a bill of indictment was lodged with the Gdańsk Regional Court (*Sąd Okręgowy*). The applicant, together with 3 other co-accused, was indicted on charges of drug smuggling and conspiracy to import drugs committed in an organised criminal group aiming at importing into Poland considerable amounts of drugs.

10. During the court proceedings the courts further extended the applicant's detention on several occasions, namely on 23 June 2005 (to 30 September 2005), on an unspecified subsequent date, on 28 June 2006 (to 30 October 2006), 3 October 2006 (to 31 December 2006), 28 December 2006 (to 30 April 2007), 25 April 2007 (31 August 2007), 22 August 2007 (to 31 December 2007), 11 December 2007 (to 31 March 2008), 18 March 2008 (until 30 June 2008), 25 June 2008 (until 30 September 2008) and 18 September 2008 (until 31 December 2008).

The courts repeated the grounds previously given for keeping the applicant in custody. They attached importance to the likelihood of a severe sentence of imprisonment being imposed on him and the risk that he would obstruct the proceedings.

11. On 19 October 2005 the Regional Court held the first hearing. The trial continued until 30 December 2008.

Throughout that time 98 hearings were scheduled. The hearings took place at last once a month but at certain periods the court held up to 5 hearings per month. On average, they were held at 2 week-intervals and there was no interruption of the trial longer than 5 weeks.

12. On 30 December 2008 the court convicted the applicant of drug smuggling and conspiracy to import drugs but acquitted him of acting in an organised criminal group. He was sentenced to a cumulative penalty of 12 years' imprisonment. The Court deducted the period of his detention from 14 July 2004 to 12 June 2005 from his sentence. The applicant appealed.

13. The applicant did not specify when the proceedings had terminated but it appears that they most likely ended between the end of 2009 and the beginning of 2010.

B. Other criminal proceedings against the applicant

1. Case no. III K 120/06 before the Kraków Regional Court

14. On an unspecified date in 2005 the Kraków Regional Court convicted the applicant of drug-related offences committed in an armed organised criminal group and sentenced him to 15 years' imprisonment. The applicant started to serve the sentence on 13 June 2005.

2. Case no. XVIII K 311/07 before the Warsaw Regional Court

15. On an unspecified date, apparently on 18 January 2006, the Ostrołęka Regional Prosecutor charged the applicant with, among other things, leading an organised criminal group called *"mokotowska"* involved in trafficking large amounts of drugs, arms and ammunition, money laundering, bribery of public officials, kidnapping, extortion, armed robbery and other theft-related offences.

16. On 19 January 2006 the Ostrołęka Distrcit Court remanded the applicant in custody relying on the reasonable suspicion that he had committed the offences with which he had been charged. The court underlined that the suspicion was fully supported by evidence obtained from a crown witness (*świadek koronny*) and confirmed by other evidence, such as searches, inspections of crime scenes and testimonies of other witnesses. It also referred to the risk that the applicant would try to bring pressure to bear on witnesses, the need to secure the proper course of the investigation and the likelihood that a severe penalty – minimum 8 years' imprisonment - would be imposed on him.

17. On an unspecified date, apparently in 2009, the Warsaw Regional Court convicted the applicant as charged and sentenced him to 14 years' imprisonment.

18. The applicant did not inform the Court of the further course of the proceedings.

C. Proceedings under the 2004 Act (case no. II S 22/07)

19. On 18 July 2007 the applicant lodged with the Gdańsk Court of Appeal (*Sąd Apelacyjny*) a complaint under section 5 of the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) ("the 2004 Act").

20. The applicant sought a ruling that the length of the proceedings in case no. IV K 200/05 (see paragraphs 6-13 above) had been excessive and an award of just satisfaction in the amount of 10,000 Polish zlotys (PLN) (approx. 2,500 euros (EUR)).

21. On 25 September 2007 the Gdańsk Court of Appeal dismissed his complaint as unfounded. It held that since the beginning of the trial 61 hearings had been scheduled in the case until 24 August 2007 and only 11 of them had been adjourned due to the absence of counsel or co-suspects and because of a lay judge's illness. The court concluded that the proceedings had been conducted with the requisite speed and without undue delay.

D. The "dangerous detainee" regime

1. Detention facilities in which the applicant was held

22. After his arrest on 14 July 2004 (see paragraph 6 above) the applicant was detained in the Sztum Prison (*Zakład Karny*). Shortly afterwards, on an unspecified date, he was transferred to the Gdańsk Remand Centre (*Areszt Śledczy*). He remained there until 22 January 2009 but in 2008 he was transferred to the Warszawa-Mokotów Remand Centre for a few months. From 22 January 2009 to 9 June 2009 he was detained in the Kraków Remand Centre. Later he was held in the Radom Prison and then transferred to the Warsaw Mokotów Remand Centre.

2. Imposition of the regime and its continuation

23. On 22 July 2004 the Sztum Prison Penitentiary Commission (*Komisja Penitencjarna*) classified the applicant as a "dangerous detainee" (a so-called *"tymczasowo aresztowany niebezpieczny"*; in the relevant legal

provisions referred to as *"tymczasowo aresztowany stwarzający poważne zagrożenie społeczne albo poważne zagrożenie dla bezpieczeństwa aresztu"*). It considered that it was necessary to place the applicant in a solitary cell designated for such detainees at a special high-security prison ward because he had been charged with serious offences committed in an organised criminal group. Pursuant to Article 212a § 3 of the Code of Execution of Criminal Sentences (*Kodeks karny wykonawczy*), this circumstance by itself justified the classification of a detainee as "dangerous". The commission also referred to the applicant's serious lack of moral character (*wysoki stopień demoralizacji*).

24. Every three months the Gdańsk Remand Centre's Penitentiary Commission (*Komisja Penitencjarna Aresztu Śledczego*) reviewed its decision on the classification of the applicant as a "dangerous detainee". The applicant appealed against many of those decisions. He submitted that the offences with which he had been charged, in particular drug-smuggling, did not justify the imposition of the special regime. He argued that the measure had been extended automatically without any consideration for his health and mental well-being, that it had in fact been imposed for an unlimited duration and was putting an exceptionally severe strain on him and his family. He also complained about being subjected to a strip search every time he left and entered the cell.

All the appeals were dismissed.

25. On 3 September 2007 the Gdańsk Regional Court – Penitentiary Division examined the applicant's appeal against the Gdańsk Remand Centre's Penitentiary Commission's decision of 10 July 2007 prolonging the application of the "dangerous detainee" regime and continuing to hold him in a solitary cell.

In his appeal, the applicant underlined that the special regime had already been imposed on him for some 3 years and that its continuation had been based solely on the charges laid against him, without any court conviction. In his view, this was in breach of the principle of the presumption of innocence.

The court rejected the applicant's argument that the nature of the offences with which he had been charged did not justify the continued application of that regime in his case. In that regard, it stressed that the applicant had been charged in three separate sets of criminal proceedings conducted by different courts or prosecutors and those other charges included, among other things, the leading of an organised and armed criminal group, kidnapping, armed robbery and arms trafficking. The nature of the charges and the applicant's personal circumstances, such as his previous criminal record, leadership qualities and tendency to dominate the others fully supported the view that there existed the "danger [to society and the security of a remand centre]" referred to in Article 212a of the Code of Execution of Criminal Sentences. In sum, there was no indication that the

contested decision was contrary to the law, which was the sole ground on which it could be challenged and possibly quashed. As regards the applicant's argument that his contacts with his family were severely restricted as a result of his "dangerous detainee" status, the court held that those restrictions were lawful as being applied under the relevant provisions of the Code of Execution of Criminal Sentences and did not make it impossible for him to maintain such contacts.

26. On 11 December 2007, 15 February 2008 and 3 June 2008 the Gdańsk Regional Court – Penitentiary Division, relying on the same grounds, rejected further appeals against the Penitentiary Commission's decisions prolonging the imposition of the "dangerous detainee" regime on the applicant. In his appeals, the applicant submitted that his prolonged solitary confinement was putting an exceptionally severe emotional strain on him, which was compounded by his lack of sufficient contact with the family. He also complained that the routine strip-searches, to which he had been subjected, sometimes several times a day, were intrusive, unnecessary and humiliating.

27. Further decisions on the prolongation of the "dangerous detainee" regime were based on similar grounds or repeated the initial reasons.

On 19 August 2009 the Radom Regional Court upheld the Penitentiary Commission's decision to continue the imposition of the regime, given on 23 June 2009, in view of the serious nature of the charges brought against the applicant and his personal circumstances, such as his leadership qualities and tendency to dominate the others and his serious lack of moral character.

On 23 October 2009 the Warsaw Regional Court upheld a similar decision, stressing that since 13 June 2005 the applicant had been serving a sentence of 15 years' imprisonment, following his conviction for drug-related offences committed in an organised criminal group. He had also been convicted at first instance by the Gdańsk District Court for other drug-related offences and sentenced to 12 years' imprisonment. In these circumstances, the special regime had to be continued.

On 14 July 2010 the Warsaw Regional Court upheld another decision of the Penitentiary Commission, relying on the applicant's criminal convictions and stressing that under the applicable legal provisions no time-limit was set for the imposition of the regime.

On 30 August 2011 the Warsaw Regional Court upheld the Penitentiary Commission's decision of 2 August 2011. Noting that the decision was based on the fact that the applicant, in view of his personal circumstances and serious lack of moral character, posed a serious danger to prison security and order, as well as to prison officers' safety, the court found that this assessment had been objective and fully justified the continuation of the regime.

28. Throughout his detention the applicant repeatedly requested the authorities to place him with another inmate, complaining that his excessively long solitary confinement had severely affected his emotional and mental well-being.

29. The regime is still being applied to the applicant and he is still held in a solitary cell.

In all likelihood, pursuant to Article 212a § 3 of the Code of Execution of Criminal Sentences (see paragraph 44 below), the regime will continue until he has finished serving his three consecutive sentences of imprisonment, or at least the sentence following the conviction for leading an organised and armed criminal group, kidnapping, arms and drug trafficking. At present it is estimated that the applicant's imprisonment would come to an end at the end of 2031.

3. Particular aspects of the regime

30. Since 22 July 2004, when the applicant was placed in a solitary cell for dangerous detainees at the high-security prison ward until present, he has remained under increased supervision. The cells in which he has been held, including their sanitary facilities, have been constantly monitored *via* close-circuit television. They have also been searched frequently, sometimes on a daily basis.

He has been subjected to a so-called "personal check" (*kontrola osobista*), i.e. a thorough body search every time he has left and entered the cell. The applicant has explained that this means that each time he enters or leaves the cell he must strip naked in front of prison guards and carry out deep knee-bends from 6 to 10 times to enable an examination of his anus.

Whenever he is outside his cell and the high-security ward, including his appearances at court hearings, the applicant must be handcuffed or required to wear so-called "joined shackles" (*kajdanki zespolone*) on his hands and feet (see paragraph 47 below). Those shackles consist of handcuffs and fetters joined together with chains.

The applicant has many times unsuccessfully complained to the authorities that outside his cell his hands were handcuffed behind his back, which caused him considerable pain and difficulty in moving, especially during a daily walk.

The applicant's movements outside his cell and the special ward must be supervised by 2 prison guards. He is allowed to have a 1-hour long solitary walk per day in a segregated area.

E. Restrictions on the applicant's contact with his family

31. The applicant was entitled to 1 one-hour visit from the family per month.

32. He supplied a document issued by the Governor of the Gdańsk Remand Centre on 13 February 2008, setting out a list of visits received by him up to that date.

From 23 August 2004 to 20 January 2008, i.e. for 3 years and some 5 months, he was granted permission to have 11 "open visits" (*widzenie przy stoliku*). He was also granted 21"closed visits" (*widzenie przez telefon*) (see also paragraph 58 below).

33. On most occasions only the applicant's wife visited him. The applicant has 3 daughters M.H., K.H. and S.H. born, respectively, in 1988, 1993 and 1998. Throughout the above period he received visits from his oldest daughter on 2 occasions and from each of the two younger daughters once.

34. In 2004 the applicant was granted 6 visits, 2 of which were open and 4 closed. They took place on 23 August (this was an open visit from the applicant's wife), 17 September (this was a closed visit from his wife, E.H., and M.H., his oldest daughter), 15 October, 29 October (on this occasion he received an open visit from his daughter M.H.), 19 November and 17 December respectively.

35. In 2005 the applicant was granted 10 visits, only 1 of which was open. They took place on 11 February, 11 March, 15 April, 12 May, 5 July, 28 July, 16 August, 30 September (this was a closed visit from his wife and K.H., one of his daughters), 28 October and 9 December 2005.

36. In 2006 the applicant received 7 visits (including 1 "open") from his wife only. They took place on 28 February, 5 April, 13 June, 23 August, 20 October, 30 November and 29 December.

37. In 2007 the applicant was granted 7 visits from his wife, 4 of which were open visits. They took place on 9 February, 29 March, 1 June (on this open visit the applicant could also see S.H., his youngest daughter), 24 July, 6 September, 24 October and 27 November.

38. In 2008, as of the date of the issuance of the document, the applicant received one "open visit" from his wife – on 20 January 2008. He submitted that throughout the whole of 2008 he had received 5 family visits.

39. The applicant stated that his very limited contact with his daughters had been caused by the fact that the Gdańsk Remand Centre and the Kraków Remand Centre did not provide satisfactory conditions for visits by children or minor persons. A visit took place in a room where visitors were separated from a detainee by a Perspex window partition and bars, making it impossible for them to have any direct contact. A visitor, including a child, in order to reach the visiting area in the ward for dangerous detainees had to walk through the entire prison, past prison cells situated on both sides of the

corridor. This exposed his daughters to the gaze of inmates and their reaction to the girls' presence constituted an exceptionally traumatic experience for them. During the meeting, they were separated by a window and bars from their father, which was very stressful for them and made it impossible for them to have any normal contact. For that reason, considering that the conditions in which he was allowed to see his family in prison caused too much distress and suffering for his daughters, the applicant had to give up receiving visits from his daughters.

40. In the Kraków Remand Centre the visits to "dangerous detainees" could take place only on Tuesdays. For that reason, the applicant's wife was unable to visit him on every occasion he was entitled to have a monthly visit because she worked from Monday to Friday.

41. The applicant made numerous complaints about poor visiting conditions and the practical impossibility of having contact with his daughters, but they were to no avail.

F. Censorship of the applicant's correspondence

42. The applicant's correspondence with his family was censored. He supplied three envelopes bearing stamps that read respectively: "censored on 12 November 2007", "censored on 8 January 2008", "censored on 30 January 2008" and illegible signatures. The first letter was from his daughter, K.H., and two others from a family member, a certain K[a]. H.

The applicant did not inform the Court about the contents of the letters and whether any parts of them had been expunged or otherwise censored.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Preventive measures, including pre-trial detention

43. The relevant domestic law and practice concerning the imposition of detention (*aresztowanie tymczasowe*), the grounds for its extension, release from detention and rules governing others "preventive measures" (*środki zapobiegawcze*) are set out in the Court's judgments in the cases of *Gołek v. Poland* (no. 31330/02, §§ 27-33, 25 April 2006) and *Celejewski v. Poland* (no. 17584/04, §§ 22-23, 4 May 2006).

B. "Dangerous detainee" regime

1. General rules

44. Article 212a of the Code of Execution of Criminal Sentences reads, in so far as relevant, as follows:

> "1. The penitentiary commission shall classify a detainee as posing a serious danger to society or to the security of a remand centre. It shall review its decisions on that matter at least once every three months. The authority at whose disposal a detainee remains and a penitentiary judge shall be informed of decisions taken.
>
> 2. A detainee, referred to in subparagraph 1, shall be placed in a designated remand centre's ward or in a cell in conditions ensuring increased protection of society and the security of the remand centre. A penitentiary judge shall be informed about this placement.
>
> 3. A detainee who is suspected of committing an offence in an organised criminal group or organisation aimed at committing offences shall be placed in a remand centre in conditions ensuring increased protection of society and the security of the remand centre, unless particular circumstances militate against such placement.
>
> ..."

The penitentiary commission referred to in the above provision is set up by the governor of the prison or the governor of the remand centre. It is composed of prison officers and prison employees. Other persons - such as representatives of associations, foundations and institutions involved in the rehabilitation of prisoners as well as church or religious organisations – may participate in the work of the commission in an advisory capacity. If the commission's decision on the classification of a prisoner or detainee is contrary to the law, the relevant penitentiary court may quash or alter that decision (Article 76). A detainee may appeal against the penitentiary commission's decision but solely on the ground of its non-conformity with the law (Article 7).

2. Functioning of wards for dangerous detainees in practice

45. Article 212b of the Code of Execution of Criminal Sentences lays down specific arrangements for the detention of a "dangerous detainee". It reads, in so far as relevant, as follows:

> "1. In a remand centre a detainee referred to in Article 212a shall be held in the following conditions:
>
> 1) cells and places designated for work, study, walks, visits, religious services, religious meetings and religious classes, as well as cultural and educational activities, physical exercise and sports, shall be equipped with adequate technical and protective security systems;

2) cells shall be controlled more often than those in which detainees [not classified as "dangerous"] are held;

3) a detainee may study, work, participate directly in religious services, religious meetings and classes, and participate in cultural and educational activities, exercise and do sports only in the ward in which he is held;

4) a detainee's movement around a remand centre shall be under increased supervision and shall be restricted to what is strictly necessary;

5) a detainee shall be subjected to a personal check (*kontrola osobista*) each time he leaves and enters his cell;

6) a detainee's walk shall take place in designated areas and under increased supervision;

...

8) visits shall take place in designated areas and under increased supervision ...;

9) a detainee may not use his own clothes or footwear.

Rules on the use of handcuffs, fetters and other restraint measures are laid down in the Cabinet's Ordinance of 17 September 1990 on conditions and manner of using direct restraint measures by policemen (as amended on 19 July 2005) (*Rozporządzenie Rady Ministrów z dnia 17 września 1990 r. w sprawie określenia przypadków oraz warunków i sposobów użycia przez policjantów środków przymusu bezpośredniego*) ("the 1990 Ordinance"). Paragraph 6 of the 1990 Ordinance reads, in so far as relevant, as follows:

"1b Handcuffs shall be put on hands kept on the front. If a person is aggressive or dangerous, handcuffs may be put on hands kept behind the back.

2b In respect of persons detained or sentenced to imprisonment, in particularly justified cases joined shackles designed to be worn on hands and legs may be used."

46. The "N" wards (from "*niebezpieczny*" – dangerous in Polish) designed for dangerous detainees are closed units within prisons or remand centres, shut off from other sections of the detention facility. They are placed in a separate building or in a specific part of the prison building fully isolated from other sections of the prison, usually through a special entry or corridor. A security door remains closed at all times and the entire ward is continually monitored *via* close-circuit television. Regular daily routines (provision of meals, clothes, etc.) are organised with the use of remote-controlled devices, reducing to the minimum any direct contact between the detainees and the prison guards. The prison guards wear bullet-proof jackets.

Routine searches of cells are often carried out.

47. The detainees, whenever outside cells, even within the "N" ward, wear "joined shackles" or are handcuffed at all times. They are subjected to a personal check before leaving cells and on return. They all wear special red uniforms. They have a daily, solitary walk in a specially designated and segregated area and if they are allowed to spend some time in a day room, they usually remain alone. They are not necessarily subjected to solitary confinement and may share the cell with an inmate or inmates but, pursuant to paragraph 90 of the 2003 Ordinance, the number of detainees in the cell is limited to 3 persons at the same time.

According to paragraph 91(1) of the Ordinance of the Minister of Justice of 31 October 2003 on means of protection of organisational units of the Prison Service (*Rozporządzenie Ministra Sprawiedliwości z dn. 31 października 2003 r. w sprawie sposobów ochrony jednostek organizacyjnych Służby Więziennej*) ("the 2003 Ordinance"), a dangerous detainee can move about within the detention facility only singly. In justified cases such detainees may move in a group of three but under the increased supervision by the prison guards.

Paragraph 91(4) states that, outside the cell and facilities designated for "N" detainees, an "N" inmate must be permanently and directly supervised by at least 2 prison guards. This restriction can only exceptionally and in justified cases be lifted by the Prison Governor.

A dangerous detainee cannot perform any work using dangerous tools, handle devices designed to make dangerous or illegal objects, take up any work enabling him to set fire, cause an explosion or any danger to the prison security or work in any place enabling an escape or uncontrolled contact with other persons (paragraph 92). He is not allowed to make purchases in the prison shop but must submit his shopping list to a designated prison guard. The goods are delivered directly to his cell (paragraph 93).

48. As of 2008 there were 16 "N" wards in Polish prisons, which had the capacity to hold from 17 to 45 detainees.

As of February 2010 there were 340 "dangerous detainees" (convicted or detained on remand) in "N" wards.

3. Personal check

49. Article 116 § 2 of the Code of Execution of Criminal Sentences defines the "personal check" in the following way:

> "A personal check means an inspection of the body and checking of clothes, underwear and footwear as well as [other] objects in a [prisoner's] possession. The inspection of the body, checking of clothes and footwear shall be carried out in a room, in the absence of third parties and persons of the opposite sex and shall be effected by persons of the same sex."

50. Pursuant to paragraph 94 § 1 of the 2003 Ordinance:

> "1. A [dangerous] detainee shall be subjected to a personal or cursory check, in particular:

1) before leaving the ward or the workplace and after his return there;

2) before individual conversations or meetings with the representatives of the prison administration or other persons that take place in the ward;

3) immediately after the use of a direct coercive measure – if it is possible given the nature of the measure;

4) directly before the beginning of the escort."

4. Monitoring of dangerous detainees

51. By virtue of the law of 18 June 2009 on amendments to the Code of Execution of Criminal Sentences (*ustawa o zmianie ustawy – Kodeks karny wykonawczy*) ("the 2009 Amendment") Article 212b was rephrased and new rules on monitoring detention facilities by means of close-circuit television were added. The 2009 Amendment entered into force on 22 October 2009.

52. The former text of Article 212b (see paragraph 45 above) became paragraph 1 of this provision and a new paragraph 2 was introduced. This new provision is formulated as follows:

"2. The behaviour of a person in pre-trial detention referred to in Article 212a § 1 and 4 in a prison cell, including its part designated for sanitary and hygienic purposes and in places referred to in paragraph 1 (1) [of this provision] shall be monitored permanently. The images and sound [obtained through monitoring] shall be recorded."

53. The above provision belongs to the set of new rules that introduced monitoring in prisons by means of close-circuit television as a necessary security measure.

The new Article 73a reads, in so far as relevant, as follows:

"1. Detention facilities may be monitored through an internal system of devices recording images or sound, including close-circuit television.

2. Monitoring, ensuring the observation of a prisoner's behaviour, may be used in particular in prison cells including parts designated for sanitary and hygienic purposes, in baths, in premises designated for visits, in places of employment of detainees, in traffic routes, in prison yards, as well as to ensure observation of the prison grounds outside buildings, including the lines of external walls.

3. Monitored images or sound may be recorded with the help of appropriate devices.

4. Monitoring and recording of sound may not include information subject to the seal of confession or secret protected by law.

5. Images from close-circuit television installed in the part of the prison cell designated for sanitary and hygienic purposes and in baths shall be transmitted to monitors or other devices referred to in paragraph 3 in a manner making it impossible to show [detainees'] private parts or their intimate physiological functions.

...”

54. Pursuant to Article 73 (a) §§ 6 and 7, if the recorded material is not relevant for the prison security or security of an individual prisoner it shall be immediately destroyed. The Prison Governor decides for how long the relevant recorded material should be stored and how it is to be used.

55. However, all recorded material concerning a dangerous detainee is stored in accordance with Article 88c, which reads as follows:

> “The behaviour of a [detainee classified as dangerous] in a prison cell, including its part designated for sanitary and hygienic purposes and in places referred to in Article 88b (1) [places and premises designated for work, education, walking exercise, receiving visits, religious service, religious meetings and teaching, as well as cultural, educational and sports activity] shall be monitored permanently. The images and sound [obtained through monitoring] shall be recorded.”

56. Before that amendment, the rules on monitoring detainees were as included in paragraph 81 § 2 of the 2003 Ordinance, according to which a prison cell could be additionally equipped with video cameras and devices enabling listening.

C. Right to visits in detention

1. Situation until 8 June 2010

57. Pursuant to Article 217 § 1 of the Code of Execution of Criminal Sentences, as applicable until 8 June 2010, a detainee was allowed to receive visitors, provided that he had obtained a visit permission (*“zezwolenie na widzenie”*) from the authority at whose disposal he remained, i.e. an investigating prosecutor (at the investigative stage) or from the trial court (once the trial had begun) or from the appellate court (in appeal proceedings). A detainee was entitled to 1 one-hour long visit per month.

58. According to paragraphs 2 and 3, a visit should take place in the presence of a prison guard in a manner making it impossible for a detainee to have direct contact with a visitor but the authority which issued the permission may set other conditions. In practice, there are 3 types of visits: an “open visit”, a “supervised visit” (*widzenie w obecności funkcjonariusza Służby Więziennej*) and a “closed visit”.

An open visit takes place in a common room designated for visits. Each detainee and his visitors have at their disposal a table at which they may sit together and can have an unrestricted conversation and direct physical contact. Several detainees receive visits at the same time and in the same room.

A supervised visit takes place in the same common room but the prison guard is present at the table, controls the course of the visit, may restrict

physical contact if so ordered under the visit permission, although his principal role usually is to ensure that the visit is not used for the purposes of obstructing the proceedings or achieving any unlawful aims and to prevent the transferring of any forbidden objects from or to prison.

A closed visit takes place in a special room. A detainee is separated from his visitor by a Perspex partition and they communicate through an internal phone.

59. Article 217 § 5 lays down specific conditions for receiving visits by dangerous detainees in the following way:

> "In the case of a [dangerous detainee], the governor of the remand centre shall inform the authority at whose disposal a detainee remains of the existence of a serious danger for a visitor and that it is necessary to grant a visit permission in a manner making [his or her] direct contact with a detainee impossible."

2. Situation as from 8 June 2010

(a) Constitutional Court's judgment of 2 July 2009 (no. K. 1/07)

60. The judgment was given following an application, lodged by the Ombudsman on 2 January 2007, alleging that Article 217 § 1 of the Code of Execution of Criminal Sentences was incompatible with a number of constitutional provisions, including the principle of protection of private and family life (Article 47 of the Constitution), the principle of proportionality (Article 31 § 3 of the Constitution), Article 8 of the Convention and Article 37 of the United Nations Convention on the Rights of the Child. The Constitutional Court's judgment became effective on 8 July 2009, the date of its publication in the Journal of Laws (*Dziennik Ustaw*).

61. The Constitutional Court ruled that Article 217 § 1, in so far as it did not specify the reasons for refusing family visits to those in pre-trial detention, was incompatible with the above provisions. The court held that this provision did not indicate with sufficient clarity the limitations on a detainee's constitutional right to protection of private and family life. The court also considered that Article 217 § 1 was incompatible with the Constitution in so far as it did not provide for a possibility to appeal against a prosecutor's decision to refuse a family visit to those in pre-trial detention.

(b) Amendments to the Code of Execution of Criminal Sentences

62. On 5 November 2009 Parliament adopted amendments to Article 217 of the Code of Execution of Criminal Sentences. In particular, subparagraphs 1a-1f were added. These provisions stipulate that a detainee is entitled to at least one family visit per month. In addition, they indicate specific conditions for refusing a family visit to a detainee and provide an appeal procedure against such a refusal. The amendments entered into force on 8 June 2010.

D. Monitoring of detainees' correspondence

63. The relevant domestic law and practice concerning the censorship of prisoners' correspondence are set out in the Court's judgment in the case of *Kliza v. Poland,* no. 8363/04, §§ 29-34, 6 September 2007.

E. Claim for damages for the infringement of personal rights

1. Liability for infringement of personal rights under the Civil Code

64. Article 23 of the Civil Code contains a non-exhaustive list of so-called "personal rights" (*dobra osobiste*). This provision states:

> "The personal rights of an individual, such as, in particular, health, liberty, honour, freedom of conscience, name or pseudonym, image, secrecy of correspondence, inviolability of the home, scientific or artistic work, [as well as] inventions and improvements, shall be protected by the civil law regardless of the protection laid down in other legal provisions."

Article 24, paragraph 1, of the Civil Code provides:

> "A person whose personal rights are at risk [of infringement] by a third party may seek an injunction, unless the activity [complained of] is not unlawful. In the event of infringement [the person concerned] may also require the party who caused the infringement to take the necessary steps to remove the consequences of the infringement ... In compliance with the principles of this Code [the person concerned] may also seek pecuniary compensation or may ask the court to award an adequate sum for the benefit of a specific public interest."

65. Under Article 448 of the Civil Code, a person whose personal rights have been infringed may seek compensation. That provision, in its relevant part, reads:

> "The court may grant an adequate sum as pecuniary compensation for non-material damage (*krzywda*) suffered to anyone whose personal rights have been infringed. Alternatively, the person concerned, regardless of seeking any other relief that may be necessary for removing the consequences of the infringement sustained, may ask the court to award an adequate sum for the benefit of a specific public interest ..."

66. Articles 417 et seq. of the Polish Civil Code provide for the State's liability in tort.

Article 417 § 1 of the Civil Code (as amended) provides:

> "The State Treasury, or [as the case may be] a self-government entity or other legal person responsible for exercising public authority, shall be liable for any damage (*szkoda*) caused by an unlawful act or omission [committed] in connection with the exercise of public authority."

2. Limitation periods for civil claims based on tort

67. Article 442[1] of the Civil Code sets out limitation periods for civil claims based on tort, including claims under Article 23 read in conjunction with Articles 24 and 448 of the Civil Code. This provision, in the version applicable as from 10 August 2007, reads, in so far as relevant, as follows:

> "1. A claim for compensation for damage caused by a tort shall lapse after the expiration of three years from the date on which the claimant learned of the damage and of a person liable for it. However, this time-limit may not be longer than ten years following the date on which the event causing the damage occurred."

F. Remedies against unreasonable length of proceedings

68. The relevant domestic law and practice concerning remedies for the excessive length of judicial and enforcement proceedings, in particular the applicable provisions of the 2004 Act, are stated in the Court's decisions in the cases of *Charzyński v. Poland*, no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V, and *Ratajczyk v. Poland* no. 11215/02 (dec.), ECHR 2005-VIII, and in its judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

III. INTERNATIONAL DOCUMENTS

A. Recommendation Rec(2006)2 of the Committee of Ministers of the Council of Europe to Member States on the European Prison Rules (adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies)

69. The recommendation, in its part relating to the application of security measures reads, in so far as relevant, as follows:

> "Security
>
> "51.1 The security measures applied to individual prisoners shall be the minimum necessary to achieve their secure custody.
>
> 51.2 The security which is provided by physical barriers and other technical means shall be complemented by the dynamic security provided by an alert staff who know the prisoners who are under their control.
>
> 51.3 As soon as possible after admission, prisoners shall be assessed to determine:
>
> *a.* the risk that they would present to the community if they were to escape;
>
> *b.* the risk that they will try to escape either on their own or with external assistance.

51.4 Each prisoner shall then be held in security conditions appropriate to these levels of risk.

51.5 The level of security necessary shall be reviewed at regular intervals throughout a person's imprisonment."

Safety

"52.1 As soon as possible after admission, prisoners shall be assessed to determine whether they pose a safety risk to other prisoners, prison staff or other persons working in or visiting prison or whether they are likely to harm themselves.

52.2 Procedures shall be in place to ensure the safety of prisoners, prison staff and all visitors and to reduce to a minimum the risk of violence and other events that might threaten safety.

52.3 Every possible effort shall be made to allow all prisoners to take a full part in daily activities in safety.

52.4 It shall be possible for prisoners to contact staff at all times, including during the night.

52.5 National health and safety laws shall be observed in prisons."

Special high security or safety measures

"53.1 Special high security or safety measures shall only be applied in exceptional circumstances.

53.2 There shall be clear procedures to be followed when such measures are to be applied to any prisoner.

53.3 The nature of any such measures, their duration and the grounds on which they may be applied shall be determined by national law.

53.4 The application of the measures in each case shall be approved by the competent authority for a specified period of time.

53.5 Any decision to extend the approved period of time shall be subject to a new approval by the competent authority.

53.6 Such measures shall be applied to individuals and not to groups of prisoners."

B. The 2009 Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

70. From 26 November to 8 December 2009 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or

Punishment ("the CPT") carried out a periodic visit to selected detention establishments in Poland.

The CPT visited wards designated for dangerous detainees in the Poznań Remand Centre, the Racibórz Prison and the Rawicz Prison. The CPT report contains a general description of the "N" regime and a number of specific recommendations aimed at ameliorating conditions of detention of inmates with "N" category status in the establishments visited. It also lists recommendations aimed at removing perceived shortcomings in the "dangerous detainee" regime in general.

71. The following observations were made in paragraph 91 of the report in respect of the application of the regime:

> "The regime applied to 'N' category prisoners remained very restrictive, similar to the one described in the report on the 2004 visit. Out-of-cell time consisted essentially of one hour of outdoor exercise per day (taken either alone or in the company of a cellmate) and access to a recreation room twice weekly at Poznań Remand Prison and Racibórz Prison. Inmates could have their own TV in the cell. They were entitled to a weekly shower, two visits a month, and two phone calls per month for sentenced prisoners (at the prosecutor's discretion for remand prisoners) at Rawicz and Racibórz prisons, and a five-minute-daily phone call for sentenced prisoners at Poznań Remand Prison. Contact with staff was limited to occasional visits by educators, psychologists and a chaplain.
>
> The CPT remains of the opinion that the regime for 'N' status prisoners should be fundamentally reviewed. Solitary confinement or small-group isolation for extended periods is more likely to de-socialise than re-socialise people. There should instead be a structured programme of constructive and preferably out-of-cell activities, and educators and psychologists should be proactive in working with "N" status prisoners to encourage them to take part in that programme and attempt to engage them safely with other prisoners for at least a part of each day. As stressed in the report on the visit in 2004, regardless of the gravity of the offences of which prisoners are accused or have been convicted and/or their presumed dangerousness, efforts must be made to provide them with appropriate stimulation and, in particular, with adequate human contact."

72. In paragraph 92 of the report the CPT referred to the procedure for the classification as a "dangerous detainee" and the usually lengthy application of the "dangerous detainee" status in the following terms:

> "The procedure for allocation and review of 'N' status remained unchanged. Despite the presence of regular quarterly reviews, most prisoners remained in 'N' status for lengthy periods of time. ...
>
> The Committee must stress that placement in an 'N' unit should not be a purely passive response to the prisoner's attitude and behaviour. Instead, reviews of placement should be objective and meaningful, and form part of a positive process designed to address the prisoner's problems and permit his (re-)integration into the mainstream prison population. In the CPT's opinion, the procedure for allocating a prisoner to 'N' status should be refined to ensure that only those who pose an ongoing high risk if accommodated in the mainstream of the prison population are accorded this status. Reviews of 'N' status should specify clearly what is to be done to assist the

prisoner concerned to move away from the 'N' status and provide clear criteria for assessing development. Prisoners should be fully involved in all review processes. The Committee reiterates its recommendation that the Polish authorities review current practice with a view to ensuring that "N" status is only applied and maintained in relation to prisoners who genuinely require to be placed in such a category."

73. In paragraph 94, the CPT expressed the following opinion regarding the practice of routine strip-searches:

"The CPT also has serious misgivings about the systematic practice of obliging 'N' status prisoners to undergo routine strip-searches whenever entering or leaving their cells. The prisoners concerned had to undress completely, and squat fully naked in view of the guards and any prisoner(s) sharing the cell while all their clothes were examined.

In the CPT's opinion, such a practice could be considered as amounting to degrading treatment. The Committee recommends that strip-searches only be conducted on the basis of a concrete suspicion and in an appropriate setting and be carried out in a manner respectful of human dignity."

74. The CPT gave the following general recommendations to the Polish Government in respect to prisoners classified as "dangerous" ("N" status):

"- the Polish authorities to review the regime applied to 'N' status prisoners and to develop individual plans aimed at providing appropriate mental and physical stimulation to prisoners (paragraph 91);

- the Polish authorities to review current practice with a view to ensuring that 'N' status is only applied and maintained in relation to prisoners who genuinely require to be placed in such a category (paragraph 92);

- strip-searches to be conducted only on the basis of a concrete suspicion and in an appropriate setting, and to be carried out in a manner respectful of human dignity (paragraph 94).

C. The Polish Government's response to the CPT's report

75. The Polish Government's response to the CPT report was published on 12 July 2011.

76. In respect of the recommendation that the Polish authorities should revise the regime applied to "N" status prisoners and develop individual plans aimed at providing inmates with appropriate psychological and physical stimulation (paragraph 91), they stated:

"Adult[s] ... classified in the category of so-called dangerous offenders have a possibility of selecting a system in which they serve their sentence of imprisonment, i.e. programmed impact or an ordinary system. The above does not apply to sentenced juvenile offenders who are classified as dangerous and who obligatorily serve their sentence in the system of programmed impact. In an ordinary system, a convict may use employment available at the penitentiary institution, as well as education and cultural-educational and sports classes. As far as such convicts are concerned, no plans are made for application of the individual programme of impact. The individual

programme of impact is prepared in co-operation with the convict who declared that he wishes to serve his sentence in the system of programmed impact, which anticipates active participation of the convict in the process of re-socialization by means of fulfilment of tasks imposed upon him as part of the programme which are aimed at solving the problems constituting the grounds for the offences he committed.

Dangerous convicts qualified in a therapeutic system requiring specialized impact are presented with individual therapeutic programmes preceded by diagnosis, which encompasses:

1) a description of the causes of the event;

2) a description of irregularities in the area of cognitive, emotional and behavioural processes;

3) characteristics of the actual state of their psychological and physical condition;

4) a description of the problem constituting the grounds justifying delegation for the therapeutic system;

5) description of individual problems of the convict;

6) evaluation of motivation to participate in implementation of the individual therapeutic programme;

7) indication of positive features if personality and behaviour of the convict.

When developing an individual therapeutic programme, the following should be specified:

1) the scope of the conducted activities;

2) purpose of impact, possible to be undertaken in the conditions of a therapeutic ward or outside such ward, taking into account the properties of the convict;

3) methods of specialized impact;

4) criteria for implementation of an individual therapeutic programme.

Convicts qualified in the category of so-called dangerous are subjected to penitentiary impact with limitations deriving from the fact of causing by them of serious social threat or a serious threat to security of the institution. Moreover, they are subjected to impact whose purpose is to, in particular, decrease emotional tensions, as well as limitation of tendencies for aggressive or self-aggressive behaviours. In the individual programme of impact and the individual therapeutic programme conducted for him, methods and measures are specified which are aimed at mental and physical stimulation of the convict. It should also be emphasised that each inmate, including dangerous offender, exhibiting symptoms of worsening of his mental conditions is covered by psychological and psychiatric help. Moreover, dangerous inmates are also covered by intensive psychological supervision for the purpose of elimination of tensions resulting from an increased isolation.

The Polish prison system developed rules of organization and conditions of conduct of penitentiary impact against convicts, persons under detention on remand and punished persons who pose serious social danger or serious danger for security of the penitentiary institution or a detention on remand centre, kept in conditions ensuring increased security of the community and the security of the penitentiary institution. Such solutions are aimed at intensification and unification of impact against dangerous inmates, and in particular:

- directing the penitentiary work on preventing of negative consequences of limitation of social contacts by organization and initiation of desirable activity as part of cultural-educational and sports activities, re-adaptation programmes;

- undertaking measures connected with maintenance of mental hygiene, including the reduction of the level of stress and aggression;

- a need of allowing the inmate to commence or continue education (in particular in case of juvenile offenders);

- undertaking of employment in the division;

- impact based on educational and prophylactic programmes.

Recommendations of the Committee concerning development of individual programmes for dangerous convicts have been taken into account and are implemented according to the provisions binding in this regard."

77. Referring to the recommendation that the Polish authorities should verify their current practice in order to ensure that the "N" status is accorded appropriately and maintained only in respect of prisoners who do, in fact, require to be qualified in such category (paragraph 92), the Government responded:

"In the Polish penal law, the basic legal act specifying criteria of qualifying inmates creating serious social danger or serious danger to security of the institution is the [Code of Execution of Criminal Sentences].

The aforementioned inmates are placed in a designated division or cell of a penitentiary institution or an investigation detention centre in conditions ensuring increased protection of the community and the security of the penitentiary unit. An authority authorized to verify a necessity of further stay of the inmate in a designated division or cell is a penitentiary commission. The penitentiary commission is obliged to verify its decisions in this regard at least once every three months. Decisions taken by the penitentiary commission shall be each time notified to the penitentiary judge, and in the event of detention on remand, also to the authority at whose disposal the inmate is. The penitentiary commission performed an inquisitive and, in every case, individual analysis of justification of the request for qualification, as well as verifies a necessity of continued stay of the inmates in delegated division or cell.

Moreover, attention should be drawn to the fact that each decision of the authority executing the judgement according to Art. 7 of the [Code of Execution of Criminal Sentences] is subject to an appeal by the inmate.

Summing up the above, we can state that such frequent verification of this category of inmates, an analysis of behaviours and a legal situation gives a guarantee of real evaluation of the situation of the inmate and possible benefits deriving from continued application against him of an extended system of protection."

78. Lastly, in regard to the recommendation that a strip-search should be conducted only on the basis of a concrete suspicion and under appropriate conditions, as well as with respect for human dignity (paragraph 94 of the Report), the Government stated:

"The principles and procedures of performing a personal search of the inmate and other persons in penitentiary institutions and investigation detention centres are regulated in the [Code of Execution of Criminal Sentences] and the [Ordinance of the Minister of Justice of 31 October 2003 on means of protection of organisational units of the Prison Service]. According to these provisions, personal check-up consists of examination of the body and checking clothes, underwear and shoes, including any objects in possession of the convict. Inspection of the body and checking-up clothes and shoes is each time performed by officers of the Prison Service in a separate room, in absence of any third parties and persons of a different sex, and is performed by persons of the same sex. The conducted control must, on many occasions have a prevention character, but it is always performed with respect for human dignity, applying the principle of humanitarianism and legality. The control is conducted for the purpose of finding dangerous and forbidden products and preventing an escape or in other justified cases. Departure from these rules would entail a realistic threat to security of the penitentiary unit and inmates kept therein."

THE LAW

I. THE COURT'S ASSESSMENT OF FACTS

79. The account of the facts in the present case was provided by the applicant, who also supplied various documents in support of his complaints.

The Government did not submit observations on the admissibility and merits of the application. Nor did they make any comments on the applicant's claims for just satisfaction. In that regard, the Court would also note that the Government asked, and were granted by the President of the Chamber, extensions of the time-limits set for submission of their observations and, subsequently, their comments on the applicant's claims for just satisfaction.

80. In the circumstances, the Court will examine the admissibility and merits of the application solely on the basis of the applicant's submissions and the documentary evidence produced by him (see *Fedotov v. Russia*, no. 5140/02, § 61, 25 October 2005; *Kostadinov v. Bulgaria*, no. 55712/00,

§ 50, 7 February 2008; and *Wasilewska and Kałucka v. Poland*, nos. 28975/04 and 33406/04, § 34, 23 February 2010).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE IMPOSITION OF THE "DANGEROUS DETAINEE" REGIME

81. The applicant complained that the prolonged imposition of the "dangerous detainee" regime was in breach of Article 3 of the Convention. He referred, in particular, to his excessively long confinement in a solitary cell and humiliating strip searches with deep knee-bends, to which he had been, and still was, subjected daily.

Article 3 of the Convention reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

82. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The applicant's arguments

83. The applicant maintained that his prolonged solitary confinement and complete segregation from other detainees, as well as his excessive isolation from his family and the outside world put an exceptionally severe emotional and mental strain on him. For many years he had to undergo daily, on occasions several times a day, humiliating strip-searches whenever he left or entered his cell, despite the fact that all his movements within the cell were monitored by means of close-circuit television. Outside the ward he was always supervised by prison guards.

84. In the applicant's opinion, the prolongation of the regime had been a purely automatic exercise, which had not been based on any genuine review of his personal circumstances and behaviour in detention. The fact that he had been suspected of offences involving organised crime had sufficed for the authorities to extend the imposition of the "N" status indefinitely and his subsequent conduct in prison had not been considered at all. In that regard, he stressed that he had never had any record of bad or problem behaviour in

prison. Nor had he ever been subjected to a disciplinary penalty for a breach of the prison rules or prison order.

The applicant concluded that the treatment to which he was subjected under the "dangerous detainee" regime" amounted to treatment contrary to Article 3 of the Convention and asked the Court to find a breach of that provision.

2. The Court's assessment

(a) General principles deriving from the Court's case-law

85. Article 3 of the Convention enshrines one of the most fundamental values of democratic societies. Even in the most difficult of circumstances, such as the fight against terrorism or crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned. The nature of the offence allegedly committed by the applicant is therefore irrelevant for the purposes of Article 3 (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV; *Indelicato v. Italy*, no. 31143/96, § 30, 18 October 2001; *Öcalan v. Turkey* [GC], no. 46221/99, ECHR 2005- ..., § 179; and *Ramirez Sanchez v. France* [GC], no. 59450/00, ECHR-2006-..., § 115 et seq., with further references).

86. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see, for instance, *Kudła v. Poland* [GC], no. 30210/96, ECHR 2000-IX, § 91).

87. The Court has considered treatment to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical or mental suffering. It has deemed treatment to be "degrading" because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. On the other hand, the Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see, among other authorities, *Kudła* cited above, § 92, with further references). The question whether the purpose of the treatment was to humiliate or to debase the victim is a further factor to be taken into account, but the absence of any such purpose cannot conclusively rule out a violation of Article 3 (see *Van der Ven v. the Netherlands*, no. 50901/99, ECHR 2003-II, § 48).

88. Measures depriving a person of his liberty often involve an element of suffering or humiliation. However, it cannot be said that detention in a high-security prison facility, be it on remand or following a criminal

conviction, in itself raises an issue under Article 3 of the Convention. Public-order considerations may lead the State to introduce high-security prison regimes for particular categories of detainees and, indeed, in many State Parties to the Convention more stringent security rules apply to dangerous detainees. These arrangements, intended to prevent the risk of escape, attack or disturbance of the prison community, are based on separation of such detainees from the prison community together with tighter controls (see, for instance, *Ramirez Sanchez*, cited above, §§ 80-82 and 138; *Messina (no. 2) v. Italy*, no. 25498/94, ECHR 2000-X, §§ 42-54; *Labita,* cited above, §§ 103-109; *Rohde v. Denmark*, no. 69332/01, 21 July 2005, § 78; *Van der Ven*, cited above, §§ 26-31 and 50; and *Csüllög v. Hungary*, no. 30042/08, 7 June 2011, §§ 13-16).

89. While, as stated above, those special prison regimes are not *per se* contrary to Article 3, under that provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding that unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła*, cited above, §§ 92-94; and *Van der Ven*, cited above, § 50).

90. The Court, making its assessment of conditions of detention under Article 3, will take account of the cumulative effects of those conditions, as well as the specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, ECHR 2001-II, § 46). In that context, it will have regard to the stringency of the measure, its duration, its objective and consequences for the persons concerned (see *Van der Ven*, cited above, § 51 and paragraph 159 above).

91. Although the prohibition of contacts with other prisoners for security, disciplinary or protective reasons can in certain circumstances be justified, solitary confinement, even in cases entailing only relative isolation, cannot be imposed on a prisoner indefinitely. It would also be desirable for alternative solutions to solitary confinement to be sought for persons considered dangerous and for whom detention in an ordinary prison under the ordinary regime is considered inappropriate (see *Ramirez Sanchez*, cited above, §§ 145-146).

92. Furthermore, in order to avoid any risk of arbitrariness, substantive reasons must be given when a protracted period of solitary confinement is extended. The decision on the continuation of the measure should thus make it possible to establish that the authorities have carried out a reassessment that takes into account any changes in the prisoner's circumstances, situation or behaviour. The statement of reasons will need to be increasingly detailed and compelling the more time goes by. Indeed, solitary confinement, which is a form of "imprisonment within the prison", should

be resorted to only exceptionally and after every precaution has been taken, as specified in paragraph 53.1 of the European Prison Rules adopted by the Committee of Ministers on 11 January 2006 (see *Öcalan*, cited above, § 191; *Ramirez Sanchez*, cited above, §§ 139 and 145-146; *Messina (no.2) v. Italy* (dec), no. 25498/94, ECHR 1999-V, with further references; and *Csüllög v. Hungary*, cited above, § 31).

(b) Application of the above principles in the present case

93. The Court would first refer to the law governing the special regime.

Pursuant to Article 212a § 3, if a detainee is suspected of an organised-crime offence, the authorities have to apply the regime and, consequently, all the security measures enumerated in Article 212b, unless particular circumstances militate against this (see paragraphs 44-45 above). The legal formulation of the rule and exceptions to it could, in the Court's view, generally result in an over-inclusive regime. This conclusion goes hand in hand with the findings of the 2009 CPT report, which underlined that the procedure for allocating a prisoner "N" status fails to ensure that only those who pose an ongoing high risk if accommodated in the mainstream prison population are accorded this status (see paragraph 72 above). Also, given the absence of any provisions linking that status with a person's actual behaviour in prison, the legal framework of the "N" regime seems to be too rigid and not sufficiently oriented towards the individual circumstances of a particular detainee.

However, it is not the Court's role to assess the application of the restrictions under the regime in the abstract but to ascertain whether their cumulative effects on the applicant were incompatible with Article 3 of the Convention.

94. Turning to the facts of the present case, the Court notes that the decision of 22 July 2004 imposing the "dangerous detainee" regime on the applicant was a legitimate measure, warranted by the fact that in one of two parallel criminal proceedings conducted against him at that time, namely in case no. III K 120/06 before the Kraków Regional Court, he had been charged with drug-related offences committed in an armed organised criminal group (see paragraphs 14 and 23 above). It was not, therefore, unreasonable on the part of the authorities to consider that, for the sake of ensuring prison security, he should be subjected to tighter security controls, involving increased and constant supervision of his movements within and outside his cell, limitations on his contact and communication with the outside world and some form of segregation from the prison community.

As the Court has already held in similar cases concerning organised crime, in particular those lodged by persons linked to Mafia-type organisations, the existing, continuing danger that an applicant may re-establish contact with criminal organisations is an element that may justify applying even harsh isolation measures in order to exclude such a

possibility (see, for instance, Messina (no.2) (dec.), cited above). In the applicant's case that risk had to be taken into account and further increased in 2005, following his conviction in case no. III K 120/06 and, subsequently, in January 2006, when the charges of leading an armed organised criminal group involved in, among other things, drug-trafficking, bribery of public officials, extortion, kidnapping and arms and ammunition trafficking were laid against him . He was convicted of these offences by the first-instance court apparently in 2009 (see paragraphs 15-17 above).

Also, the monitoring of a detainee's behaviour *via* close-circuit television at all times, as in the present case, although certainly intrusive, is not *per se* incompatible with Article 3. This measure serves the purposes of both ensuring prison security and protecting the detainee from the risk of pressure or even physical attack from the criminal community which, in the context of organised crime, cannot be excluded.

95. However, for the reasons stated below, the Court cannot accept that the continued, routine and indiscriminate application of the full range of measures that were available to the authorities under the "N" regime for – as on the date of the adoption of this judgment – 7 years and 9 months was necessary for maintaining prison security and compatible with Article 3 of the Convention.

96. To begin with, since 22 July 2004 to date the applicant has continually been held in a solitary cell at a special high-security ward separated from the rest of the prison. Throughout this time he has been completely segregated from other inmates. All his repeated, numerous requests for placing another person in his cell were to no avail (see paragraphs 23 and 28-29 above). While he must have maintained a degree of daily contact with the prison staff, even if only for the sake of a daily walk (see paragraphs 30 and 45-47 above), his opportunities of communication, if only superficial, with other people in prison was very seriously reduced, nearly non-existent.

It is true that he received family visits. Nonetheless, at least between July 2004 and the end of 2008 they only took place 5 to 10 times a year and most of them were "closed visits" without any direct contact, during which he was separated from the visitors by a Perspex partition and communicated with them by internal phone (see paragraphs 31-38 and 58-59 above). The Court does not overlook the ever present need to prevent any flow of illicit information between a gang leader and the outside world. Nevertheless, in the Court's view, this – again very limited – possibility of human contact could not attenuate sufficiently the consequences of his nearly complete, prolonged isolation and his daily solitude for his mental and emotional well-being.

97. As the CPT pointed out in its 2009 report, not only was the regime itself very restrictive but also the Polish authorities in general failed to provide "N" ward inmates with appropriate stimulation and, in particular,

with adequate human contact (see paragraphs 71-74 above). In that report the authorities were explicitly criticised for not having developed "a structured programme of constructive and preferably out-of-cell activities". It was recommended that "educators and psychologists should be proactive in working with "N" status prisoners to encourage them to take part in that programme and attempt to engage them safely with other prisoners for at least a part of each day" (see paragraph 71 above). The CPT also pointed out that "placement in an "N" unit should not be a purely passive response to the prisoner's attitude and behaviour" (see paragraph 72 above).

98. In the Court's view, the circumstances of the present case confirm the CPT's observations.

It does not appear that the authorities made any effort to counteract the effects of the applicant's isolation by providing him with the necessary mental or physical stimulation except for a daily, solitary walk in the segregated area. As noted above (see paragraph 96 above), the applicant repeatedly brought the issue of his excessively long solitary confinement to the authorities' attention. For reasons which were never explained in the relevant decisions, they did not consider it fit to place another inmate with him – be it for a short or trial term – even though this solution was explicitly provided under the 2003 Ordinance (see paragraphs 24-28 and 47 above).

The Court would recall that all forms of solitary confinement without appropriate mental and physical stimulation are likely, in the long term, to have damaging effects, resulting in a deterioration of mental faculties and social abilities (see *Csüllög v. Hungary*, cited above, § 30, with further references). Considering the duration of the regime imposed on the applicant and the very limited possibilities available to him for physical movement and human contact, the Court has no doubt that his prolonged solitude must have caused him serious distress and mental suffering.

99. The negative psychological and emotional effects of his increased social isolation were aggravated by the routine application of other special security measures, namely the handcuffing and strip searches.

The Court is not convinced that handcuffing the applicant with his hands kept behind his back on leaving his cell – which was a matter of everyday procedure unrelated to any specific circumstances concerning his past or current behaviour – was indeed necessary on each and every occasion. Moreover, in contrast to a personal check, which the authorities are expressly obliged to carry out pursuant to Article 212b § 1(5), handcuffing a detainee with his hands behind the back should only take place if "a person is aggressive or dangerous" (see paragraph 45 above). It does not appear that there was a permanent need to do so in the applicant's case, given that in the prison he remained in a secure environment and other means of direct and indirect control of his behaviour were at the same time applied.

100. The Court also has misgivings in respect to the personal check to which the applicant was likewise subjected daily, or even several times a day, whenever he left or entered his cell. The Court is aware of the necessity to prevent a gangster from smuggling objects and/or communications out of his cell. Nevertheless, the strip-search, involving an anal inspection, was carried out as a matter of routine and was not linked to any concrete security needs, nor to any specific suspicion concerning the applicant's conduct . It was performed despite the fact that outside his cell and the "N" ward he could move around the remand centre only by himself under a permanent and direct supervision of at least 2 prison guards and that his mobility was restricted due to his being handcuffed – in a stressful position with hands behind his back – all the time. In addition, his behaviour in the cell, including his use of sanitary facilities, was constantly monitored *via* close-circuit television (see paragraphs 24, 26, 30, 47, 49 and 51-56 above).

In this connection, the Court would again refer to the 2009 CPT report in which it expressed its considerable concern about the practice of strip-searches applied to persons classified as dangerous detainees, in the following way: "[t]he CPT also has serious misgivings about the systematic practice of obliging "N" status prisoners to undergo routine strip-searches whenever entering or leaving their cells. The prisoners concerned had to undress completely, and squat fully naked in view of the guards and any prisoner(s) sharing the cell while their clothes were examined. In the CPT's opinion, such a practice could be considered amounting to degrading treatment." (see paragraph 73 above).

101. The Court agrees that strip-searches may be necessary on occasion to ensure prison security or to prevent disorder or crime (see *Iwańczuk v. Poland,* no 25196/94, 15 November 2001, § 59; and *Van der Ven*, cited above, § 60, with further references). However, it is not persuaded that systematic, intrusive and exceptionally embarrassing checks performed on the applicant daily, or even several times a day, were necessary to ensure safety in prison. Having regard to the fact that the applicant was already subjected in addition to several other strict surveillance measures, that the authorities did not rely on any concrete convincing security needs and that, despite the serious charges against him, he apparently did not display any disruptive, violent or otherwise dangerous behaviour in prison, the Court considers that the practice of daily strip-searches applied to him for 7 years and some 9 months, combined with his nearly complete social isolation, must have diminished his human dignity and caused him feelings of inferiority, anguish and accumulated distress which went beyond the unavoidable suffering and humiliation involved in the imposition of detention on remand (see *Van de Ven,* cited above, § 62 and paragraph 86 above).

102. Lastly, the Court would add that due to the strict, rigid rules for the imposition of the special regime and the vaguely defined "exceptional circumstances" justifying its discontinuation laid down in Article 212a § 3 of the Code of Execution of Criminal Sentences, the authorities, in extending that regime, were not in fact obliged to consider any changes in the applicant's personal situation and, in particular, the combined effects of the continued application of the impugned measures (see paragraphs 44 and 93 above). Those rules – and this was also noted by the CPT – do not provide for adequate solutions enabling the authorities, if necessary, to adjust the regime to individual conduct or to reduce the negative impact of social isolation (see paragraphs 44-47 and 71-72 above).

In the present case the authorities did not ever refer to any likelihood of the applicant's escaping in the event of his being detained under a less strict regime. However, neither the apparent absence of such risk, nor the adverse emotional and mental effects of isolation as alleged by the applicant, were considered circumstances sufficient to justify lifting any of the strict measures applied under the regime (see paragraphs 24-29 above). In that context, the Court would again recall that, as stated above (see paragraph 92 above), in cases involving solitary confinement the authorities should act with special caution in imposing that measure and should examine carefully all the specific circumstances militating for or against its continuation.

In contrast, it emerges from the relevant decisions that, apart from the original grounds based essentially on the admittedly very serious nature of the charges against the applicant, which included the leading of an armed organised criminal group involved in violent offences and on his "leadership qualities and tendency to dominate the others", as well as his "serious lack of moral character", subsequently the authorities did not find any other reasons for classifying him as a "dangerous detainee" (see paragraphs 23-27 above). While those circumstances could justify the imposition of the "N" regime on the applicant for a certain, even relatively long, period (see paragraph 93 above), they could not suffice as a sole justification for its prolonged continuation. As pointed out by the applicant (see paragraph 84 above), with the passage of time the procedure for review of his "dangerous detainee" status became a pure formality limited to a repetition of the same grounds in each successive decision.

103. In conclusion, assessing the facts of the case as a whole and considering the cumulative effects of the "dangerous detainee" regime on the applicant, the Court finds that the duration and the severity of the measures taken exceeded the legitimate requirements of security in prison and that they were not in their entirety necessary to attain the legitimate aim pursued by the authorities.

There has accordingly been a violation of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE APPLICANT'S DETENTION IN CASE No. IV K 200/05

104. Under Article 5 § 3 of the Convention the applicant complained that the length of his pre-trial detention was excessive.

Article 5 § 3, in so far as relevant, reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Period to be taken into consideration

105. On 14 July 2004 the applicant was arrested on suspicion of drug smuggling (see paragraph 6 above). On 13 June 2005, when he was still held in pre-trial detention in case no. IVK 200/05, he started to serve the sentence of 15 years' imprisonment following his conviction for drug-related offences committed in an organised criminal group (see paragraphs 8 and 14 above). Accordingly, his detention for the purposes of Article 5 § 3 of the Convention lasted 11 months.

B. The applicant's submissions

106. The applicant maintained that the length of his pre-trial detention had been excessive and unreasonable. He stressed that the national courts had failed to give valid reasons for keeping him in custody for the relevant period.

C. The Court's assessment

1. General principles deriving from the Court's case-law

107. The Court recalls that the general principles regarding the right "to trial within a reasonable time or to release pending trial, as guaranteed by Article 5 § 3 of the Convention were stated in a number of its previous judgments (see, among many other authorities, *Kudła v. Poland*, cited above, § 110 *et seq.*; and *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-..., with further references).

2. Application of the above principles in the present case

108. In their detention decisions the authorities, in addition to the reasonable suspicion – supported by evidence taken from witnesses – that the applicant had committed the offences with which he had been charged,

relied on the need to secure the course of the proceedings. In that context, they attached importance to the justified risk that the applicant would attempt to obstruct the process of obtaining evidence, in particular as the case involved a large number of accomplices who had not yet been apprehended, and the anticipated, severe penalty (see paragraphs 6-8 above).

109. The Court accepts that, regard being had to the nature of the offence with which the applicant was charged and apparently considerable number of other persons involved but not yet heard, the authorities rightly assumed that holding him in custody was necessary to ensure that the investigation followed its proper course. While during the period to be examined under Article 5 § 3 the charges against the applicant did not yet include organised crime (see paragraphs 6 and 9 above), the prosecution certainly faced a difficult task of obtaining and securing voluminous evidence from many sources and determining the respective roles played by each suspect. In the nature of things, in cases where, as in the present one, numerous persons are involved, the risk that a detainee, if released, might bring pressure to bear on witnesses or accomplices or otherwise obstruct the proceedings must be considered a valid argument militating in favour of imposing detention, rather than other measures. This ground, even taken together with other reasons advanced by the authorities, might not by itself have been enough to justify a prolonged continuation of detention on remand. However, having regard to the fact that the period in question amounted to 11 months, the Court is satisfied that there were relevant and sufficient grounds for keeping the applicant in custody.

Furthermore, it is apparent that despite the obvious complexity of the case, the authorities displayed due diligence in the conduct of the proceedings. The investigation lasted some 11 months only and there is no indication of any delay or lack of procedural activity on their part (see paragraphs 6-9 above).

110. It follows that this part of the application is inadmissible as being manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF PROCEEDINGS IN CASE No. IV K 200/05

111. The applicant further complained under Article 6 § 1 of the Convention, that the length of the criminal proceedings against him had been excessive.

Article 6, in so far as relevant, reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

A. The applicant's arguments

112. The applicant maintained that the proceedings had been unreasonably lengthy and asked the Court to find a violation of Article 6 § 1 of the Convention.

B. The Court's assessment

1. General principles deriving from the Court's case-law

113. The Court will assess the reasonableness of the length of the proceedings in the light of the particular circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. On the latter point, what is at stake for the applicant has also to be taken into account (see, among many other authorities, *Kudła*, cited above, § 124).

2. Application of the above principles in the present case

(a) Period to be taken into consideration

114. The proceedings began on 14 July 2004, when the applicant was arrested (see paragraph 6 above). The applicant described the course of the trial until his first-instance conviction, which was pronounced on 30 December 2008 (see paragraphs 6-12 above) but failed to inform the Court whether, and if so when, the proceedings had terminated (see paragraph 13 above). In that context, it is recalled that, pursuant to Rule 44C of the Rules of Court, where a party fails to divulge relevant information of its own motion or otherwise fails to participate effectively in the proceedings, the Court may draw such inferences as it deems appropriate.

In the present case, having regard to all the material in its possession, the Court finds it appropriate to assume that the proceedings terminated around the end of 2009 or the beginning of 2010 at the latest. In consequence, their length is deemed to have amounted to some 5 years and 6 months at two court instances.

(b) The Court's conclusion

115. As already noted above, the case was complex. It involved charges of organised crime, which inevitably made the task of trying the accused considerably more difficult than in an ordinary criminal case (see paragraphs 9 and 107-108 above). Assessing the authorities' conduct from the point of view of Article 5 § 3, the Court has already found that, despite

the nature of the case, the investigation was terminated without undue delay (see paragraph 109 above). It comes to the same conclusion in respect of the court proceedings. The trial at first instance lasted from 16 June 2005 to 30 December 2008, that is to say, for 3 years and some 6 months (see paragraphs 9 and 12 above). Given that during that time the Regional Court listed 98 hearings, of which only a few were adjourned for valid reasons, that the hearings were held at regular intervals and that there were no periods of inactivity (see paragraphs 11 and 21 above), the Court finds that the first-instance proceedings were terminated within a "reasonable time". The same is true in regard to the appellate proceedings which, as assumed above, ended within some 1 year, which cannot be considered an excessive period.

116. It follows that this part of the application is inadmissible as being manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF RESTRICTIONS ON CONTACT WITH THE FAMILY DURING THE APPLICANT'S DETENTION

117. The applicant further complained that the visiting regime resulting from his "dangerous detainee" status and the conditions in which visits from his family, in particular his daughters, took place practically deprived him of his family life in detention and amounted to a violation of Article 8 of the Convention.

Article 8, in its relevant part, reads as follows:

> "1. Everyone has the right to respect for his ... family life ... .
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

...

A. Admissibility

118. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The applicant's arguments

119. The applicant maintained that for many years following his arrest on 14 July 2004 he had been practically unable to maintain basic contact with his family, in particular with his daughters. He in essence referred to his detention in the Gdańsk Remand Centre and the Kraków Remand Centre, stressing that his very limited contact with the daughters had been caused by the fact that those detention facilities had not provided satisfactory conditions for visits by children or minor persons. Those conditions, in his view, had been utterly unacceptable.

A visitor, including a child, in order to reach the visiting area in the ward for dangerous detainees had to walk through the entire prison, past prison cells situated on both sides of the corridor. This exposed his daughters to the close – and especially unwelcome and disagreeable for females of their age – view of prison life and to the possible harassing, if only verbal, by inmates. It had been shocking even for an adult person and had constituted an exceptionally traumatic experience for young girls.

120. Moreover, visits took place in a room where visitors had been separated from a detainee by a Perspex window partition and bars, making it impossible for them to have any direct contact. During the meeting, the daughters were separated by a window and bars from the applicant, which had been very stressful for them and made it impossible for them to have any normal contact. For that reason, seeing that the conditions in which he had been allowed to meet the daughters had caused too much distress and emotional suffering for them, the applicant had to give up receiving visits from them.

121. In addition, he could not take advantage of all the visits from his wife to which he had been entitled because the authorities had imposed a very inflexible timing on them. For instance, in the Kraków Remand Centre the visits to "dangerous detainees" could take place only on Tuesdays. This made it impossible for his wife to visit him on every occasion because she worked from Monday to Friday.

2. The Court's assessment

(a) General principles deriving from the Court's case-law

122. Detention, likewise any other measure depriving a person of his liberty, entails inherent limitations on his private and family life. However, it is an essential part of a detainee's right to respect for family life that the authorities enable him or, if need be, assist him in maintaining contact with his close family (see *Messina (no. 2)*, cited above, § 61). There is no

question that a prisoner, or a detainee, forfeits his Convention rights merely because of his status; a person retains his or her Convention rights in detention so that any restrictions on those rights must be justified in each individual case. This justification can flow, *inter alia*, from the necessary and inevitable consequences of imprisonment or from an adequate link between the restriction and the circumstances of the prisoner in question. (see, *muatis mutandis*, *Hirst (no. 2) v. the United Kingdom* [GC], no. 74025/01, ECHR 2005-IX, § 69; and *Dickson v. the United Kingdom* [GC], no. 44362/04, ECHR 2007-..., §§ 67-68).

123. Such restrictions as limitations put on the number of family visits, supervision of those visits and, if so justified by the nature of the offence, subjection – as happened in the present case – of a detainee to a special prison regime or special visit arrangements constitute an interference with his rights under Article 8 but are not, by themselves, in breach of that provision (see *Messina (no.2), cited above,*§§ 71-74)

Nevertheless, any restriction of that kind must be applied "in accordance with the law", must pursue one or more legitimate aims listed in paragraph 2 and, in addition, must be justified as being "necessary in a democratic society" (ibid. §§ 62-63; and *Klamecki (no. 2) v. Poland*, no 31583/96, 3 April 2003, § 144, with further references).

The notion of "necessity" for the purposes of Article 8 means that the interference must correspond to a pressing social need, and, in particular, must remain proportionate to the legitimate aim pursued. Assessing whether an interference was "necessary" the Court will take into account the margin of appreciation left to the State authorities but it is a duty of the respondent State to demonstrate the existence of the pressing social need behind the interference (see, among other examples, *McLeod v. the United Kingdom*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VII, p. 2791, § 52; and *Bagiński v. Poland* no. 37444/97, 11 October 2005, § 89, with further references).

124. Furthermore, although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference. In addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private and family life. These obligations may involve the adoption of measures designed to secure respect for private and family life even in the sphere of the relations of individuals between themselves. The boundaries between the State's positive and negative obligations under Article 8 do not lend themselves to precise definition. The applicable principles are nonetheless similar. In particular, in both instances regard must be had to the fair balance to be struck between the competing interests (see *Dickson*, cited above, § 70, with further references).

(b) Application of the above principles in the present case

(i) Nature of the alleged violation

125. The applicant did not allege that at any stage of his detention he had been arbitrarily refused a family visit. This makes it unnecessary for the Court to analyse whether the restrictions complained of were imposed "in accordance with the law" in the light of its previous judgments finding that unreasoned refusals of family visits had not met that requirement, based on the Constitutional Court's case-law (see paragraphs 60-62 above and, among other examples, *Wegera v. Poland,* no. 141/07, 19 January 2010, §§ 74-75).

The gist of the applicant's Convention claim is not mainly the imposition of limitations *per se* on his contact with the family but, rather, his inability to take full advantage of visits already granted or available to him each month because of, first, the authorities' failure to secure satisfactory conditions for meetings with his daughters and, second, the specific arrangements for visits, which on most occasions excluded his direct physical contact with the visitors and, lastly, the prison schedule for visits (see paragraphs 116 and 118-120 above).

126. Having regard to the foregoing, the Court does not consider it necessary to categorise strictly its examination of the complaint as being under the head of the State's positive obligations or the head of the State's negative duty to refrain from an unjustified interference with the applicant's right to respect for his family life. The Court takes the view that the core issue before it is whether a fair balance was struck between the competing public and private interests involved (see *Dickson*, cited above, § 71).

(ii) Whether a fair balance was struck between the requirements of the applicant's detention under the "dangerous detainee" regime and his right to respect for his family life

127. The applicant's complaint about the hindrance to his right to visits concerns events in two detention facilities: the Gdańsk Remand Centre, where he was held from an unspecified date shortly after his arrest on 14 July 2004 to 22 January 2009, with a few months' break, and the Kraków Remand Centre where he was held from 22 January to 9 June 2009. Accordingly, the period under the Court's consideration amounts to nearly 5 years, less those few months in 2008 that he spent in the Warszawa Mokotów Remand Centre (see paragraphs 22 and 119 above).

128. The Court notes that, despite the fact that the applicant was entitled to 1 visit per month, he in reality received regularly monthly visits only during the first six months following his arrest in 2004, when they took place every month (see paragraph 33 above). He was also able to have 10 visits in 2005, but in the next years the number of visits was reduced to 7 visits in 2006 and 2007 and only 5 in 2008. On most occasions he was

only allowed to have the so-called "closed visits", without the possibility of direct contact as he was separated from the visitors by a Perspex partition and they could communicate verbally only by internal phone (see paragraphs 32-38 and 58 above).

129. The Court accepts that, in the circumstances of the case, certain restrictions on the applicant's contact with the family were inevitable. As stated above, detention entails inherent limitations on the detainee's private and family life, including restrictions on family visits or, if so justified by the nature of the offence and detainee's circumstances, special arrangements for such visits (see paragraphs 122-123 above). In particular, in cases involving high-security prison regimes where the applicants are charged with, or convicted of, a serious offence representing a considerable social danger – for instance, violent or organised Mafia-type crime – the application of such measures as a physical separation of a detainee from his visitors through a special transparent partition can be justified by the prison security needs or the danger that a detainee would communicate with criminal organisations through the family channels (see, for instance, *Van der Ven*, cited above, §§ 16 and 54; and *Messina no. 2*, cited above, §§ 27 and 72). However, the extended prohibition on direct contact with family members is accepted under Article 8 only in so far as the authorities have not failed to fulfil their duty under this provision to enable, and assist, the applicant in maintaining contact with his close family and secured a fair balance between his rights and the aims of the special regime (see *Messina no. 2*, cited above, §§ 72-73 and paragraphs 123-124 above).

130. In the present case, for the reasons stated below, the Court does not find convincing justification for the continued, prolonged prohibition on the applicant's direct contact with his wife and daughters.

It is true and has already been noted that, given the nature of the charges against the applicant, the general risk that he might attempt to re-establish links with the criminal world had to be taken into account (see paragraph 94 above). Nevertheless, to justify long-term restrictions, there must exist a genuine and continuing danger of that kind (see paragraphs 94, 129 above and *Messina (no. 2)*, cited above §§ 66-73). In that regard, the Court notes that the first visit from the applicant's wife was an open visit enabling them direct contact and unrestricted conversation (see paragraphs 34 and 58 above). In the light of the material in the Court's possession, it appears that neither this first visit, nor any further events or the applicant's own behaviour during his detention (see paragraphs 84 and 101-102 above) revealed any grounds to believe that he intended to use his wife or daughters as intermediaries to restore contacts with the criminal community or that open family visits from them would jeopardise the prison security. Indeed, subsequently, open visits were granted to the applicant each year, although rarely, at different intervals and on an irregular basis (see paragraphs 33-38 above). In the Court's view, this shows not merely the lack of a consistent

pattern in the authorities' decisions but also, indirectly, that in reality the measures taken were not apparently related to any tangible fear or risk that could possibly legitimise the impugned restrictions under Article 8 § 2 of the Convention (cf. *Messina (no.2)*, cited above, ibid.).

131. The applicant further maintained that the unacceptable conditions in which he had received visits from his daughters, who had all three been minors at the beginning of his detention (see paragraph 33 above), had prevented him from having contact with them at all (see paragraph 119 above).

The Court would note that, by the nature of things, visits from children or, more generally, minors in prison require special arrangements and may be subjected to specific conditions depending on their age, possible effects on their emotional state or well-being and on the personal circumstances of the person visited. However, positive obligations of the State under Article 8, in particular an obligation to enable and assist a detainee in maintaining contact with his close family (see paragraphs 123-124 and 129 above), includes a duty to secure the appropriate, as stress-free for visitors as possible, conditions for receiving visits from his children, regard being had to the practical consequences of imprisonment. That duty is not discharged properly in situations where, as in the present case, the visits from children are organised in a manner exposing them to the view of prison cells and inmates and, as a result, to an inevitably traumatic, exceptionally stressful experience. The Court agrees that, as the applicant said, the exposure to prison life can be shocking even for an adult and, indeed, it must have caused inordinate distress and emotional suffering for his daughters (see paragraphs 39 and 119 above). It further notes that, owing to the authorities' failure to make adequate visiting arrangements, the applicant, having seen the deeply adverse effects on his daughters, had to desist from seeing them in prison. Throughout his detention from 14 July 2004 to the end of 2008 he saw his oldest daughter twice and each of the two younger ones once. In effect, he was deprived of any personal contact with them for several years (see paragraphs 33-34 and 37 above).

132. In view of the foregoing, the Court concludes that the restrictions imposed by the authorities on the applicant's visiting rights, taken together with their continued and prolonged failure to ensure proper conditions for visits from his daughters, did not strike a fair balance between the requirements of the "dangerous detainee" regime on the one hand, and the applicant's Convention right to respect for his family life on the other.

Accordingly, there has been a violation of Article 8 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF THE CENSORSHIP OF THE APPLICANT'S CORRESPONDENCE

133. The applicant further complained about routine censorship of his correspondence with his family.

Article 8, in its relevant part, reads as follows:

> "1. Everyone has the right to respect for ... his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The applicant's arguments

134. The applicant, apart from producing three envelopes of letters from his family members stamped "censored" on different dates (see paragraph 42 above), did not adduce any specific arguments or information supporting his allegations of a breach of his right to respect for his correspondence.

B. The Court's assessment

135. The Court would recall that in its judgment in the case of *Biśta v. Poland* and other rulings that followed, it held that applicants with complaints based on similar interferences with detainees' correspondence which – as in the applicant's case – occurred after 28 June 2007 were, in order to comply with Article 35 § 1, required to avail themselves of an action for the infringement of personal rights under Article 24 read in conjunction with Article 448 of the Civil Code (see *Biśta v. Poland*, no. 22807/07, 12 January 2010, § 49).

However, in the present case the Court does not deem it appropriate to decide on the exhaustion issue, in particular on the relevance of the fact that the limitation period of 3 years for lodging the above action had expired already on 8 January 2011 (see paragraphs 42 and 67 above), because it finds that the complaint is in any event manifestly ill-founded.

136. The practice of marking detainees' correspondence with the "censored" stamp in similar cases leads the Court to presume that the letters were opened and their contents read (see, among many other examples, *Friedensberg v. Poland*, no. 44025/08, 27 April 2010, § 36, with further references). There was accordingly an interference with the applicant's right to respect for his correspondence. The measure, likewise as in other cases

(ibid., § 43), was applied "in accordance with the law", pursuant to Article 217a § 1 of the Code of Execution of Criminal Sentences, stipulating that a detainee's correspondence shall be stopped, censored or monitored by the authority at whose disposal he remains, unless otherwise decided.

That said, the applicant, through his failure to substantiate the complaint and to provide any information, such as for example the nature or subject-matter of the letters (see paragraph 42 above), capable of showing that the impugned interference was not "necessary in a democratic society", has not proved before the Court that the censorship of his correspondence lacked justification under Article 8 of the Convention.

137. It follows that this part of the application is inadmissible as being manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VII. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF THE IMPOSITION OF THE "DANGEROUS DETAINEE" REGIME

138. In respect of the imposition of the "dangerous detainee" regime on him, the applicant also alleged that, irrespective of the fact that it constituted treatment contrary to Article 3 of the Convention, it also amounted to a violation of his right to private life protected by Article 8 of the Convention.

Article 8, in its relevant part reads as follows:

> "1. Everyone has the right to respect for his private ... life.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

139. The Court notes that this complaint is linked to the complaint under Article 3 examined above (see paragraphs 81-103 above) and must therefore likewise be declared admissible.

B. Merits

140. The applicant submitted that the imposition of the "N" regime on him violated his right to private life, in particular on account of intrusive, constant surveillance of his cell, including sanitary facilities, and grossly humiliating strip-searches, which had been performed on him several times a day without any plausible security considerations.

141. The Court observes that the prolonged imposition of the "dangerous detainee" regime on the applicant lies at the heart of his complaint under Article 3 of the Convention. These issues have been examined and resulted in the finding of a violation of that provision (see paragraph 103 above). In the circumstances, the Court considers that no separate issue arises under Article 8 of the Convention and makes no separate finding.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

142. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

143. The applicant claimed EUR 10,000 in respect of non-pecuniary damage.

144. The Court, having regard to its case-law and assessing the claim on an equitable basis, awards the applicant EUR 5,000 in respect of non-pecuniary damage. It rejects the remainder of the claim.

B. Costs and expenses

145. Since the applicant made no claim for the reimbursement of costs and expenses incurred before the domestic courts or in the proceedings before the Court, there is no reason to make any award under this head.

C. Default interest

146. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Articles 3 and 8 concerning the imposition of the "dangerous detainee" regime on the applicant and under Article 8 concerning the restrictions on contact with his family during detention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 8 of the Convention on account of the restrictions on the applicant's contact with his family during detention;

4. *Holds* that there is no separate issue under Article 8 of the Convention in respect of the imposition of the "dangerous detainee" regime on the applicant;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros), to be converted into Polish zlotys at the rate applicable at the date of settlement, plus any tax that may be chargeable in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

David Thór Björgvinsson
President